said in *Vacher & Sons* v. *London Society of Compositors*: [1]

"The title of an Act is undoubtedly part of the Act itself and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope."

Section 16A has reference to "his trade union" in subsections (2) and (3). Clearly, and particularly where it is placed in Part V headed "Conciliation", it should have some bearing on some dispute between the workman and his employer. Under the Singapore Act, the employee has to make his representations "through his trade union" (*vide* section 35 of the Industrial Relations Act, Cap. 124). The appellant, a sweeper cum watchman in a Tamil school, is in my view more correctly classified as a "labourer" under the Employment Ordinance than as a "workman" under the Industrial Relations Act.

It has been urged also that "any court" in subsection (5) could only refer to a court established under the Act. I do not agree. Appearing before "a court established under this Act", notwithstanding that the words "court of Law" were used in section 29(3), I am of opinion that to accept that construction would be to offend the rule against redundancy. It was unfortunate perhaps that by an oversight the form adopted in section 29(3) was not followed. I favour the meaning given to "court" in section 3 of the Interpretation Act, 1967 and, in the absence of any words of limitation, the word "court" should be construed to refer to "any court" of competent jurisdiction.

There is one other observation I would like to make. It was not challenged by the appellant that his services were terminated on "2 months notice commencing from 1 October, 1971 to 30 November, 1971... in accordance with the agreement made ... on 1st May, 1966". Allegations of misconduct or of just cause or excuse for dismissal, are not required to justify dispensation of services pursuant to terms of a contract of employment. The Employment Ordinance of 1955 is unequivocal in this respect (*vide* sections 13(1) and 14(1)). I doubt that the Minister has power to order reinstatement in such case, in the absence of specific words in the legislation that this right of an employer to dismiss an employee has been curtailed or restricted. From the first step in this action, it is apparent that it should be struck out under Order 25 rule 4 on the ground that the statement of claim disclose not only *no reasonable cause of action* but *no cause of action* as it is quite inconceivable how the appellant can on the facts contend he had been *wrongfully dismissed.*

Appeal dismissed.

Solicitors: *Thevin, Chandran & Siva; Lewis & Co.*

SUN MAN TOBACCO CO. LTD. v. GOVERNMENT OF MALAYSIA

[F.C. (Azmi L.P., Gill and Ong Hock Sim F.JJ.)
October 6, 1973]
[Ipoh — Federal Court Civil Appeal No. 52 of 1973]

Income Tax — Claim by Government for payment of income tax — Application to sign final judgment — Whether taxpayer entitled to defend on contention that no tax at all is due — Income Tax Act, 1967, ss. 106 and 142.

The appellant had appealed against the judgment of the High Court giving leave to the respondent to sign final judgment against the appellant for the sum of $1,320,440.15 cts. alleged to be income tax due from the appellant. It was argued on the appeal that section 106(3) of the Income Tax Act, 1967 (which provides that in any proceedings under the section the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed under appeal or incorrectly increased) did not apply in any case where the taxpayer contends that no tax whatever is due by him.

Held: the learned trial judge was right in giving leave to the respondent to sign final judgment and in holding that if the taxpayer wished to dispute that the amount of tax sought to be recovered was excessive, incorrectly assessed, under appeal or incorrectly increased, he has to do so by way of appeal to the Special Commissioners.

Cases referred to:-

(1) *Jacobs* v. *Booth's Distillery Co.* (1901) 85 L.T. 262.
(2) *Runnacles* v. *Mesquita* (1876), 1 Q.B.D. 416.
(3) *A.B.C.* v. *Comptroller of Income Tax, Singapore* [1959] M.L.J. 162, 166.
(4) *Comptroller of Income Tax* v. *R.S.T.* [1962] M.L.J. 216.
(5) *Comptroller of Income Tax* v. *A. Co. Ltd.* [1966] 2 M.L.J. 282, 284.
(6) *Comptroller of Income Tax* v. *A.B.* and *Comptroller of Income Tax* v. *C.D. Ltd.* [1967] 1 M.L.J. 11.
(7) *Comptroller-General of Inland Revenue, Malaysia* v. *Weng Lok Mining Co. Ltd.* [1969] 2 M.L.J. 98.
(8) *Government of Malaya* v. *D.C.* [1973] 1 M.L.J. 161.
(9) *Comptroller-General of Inland Revenue* v. *N.P.* [1973] 1 M.L.J. 165.

FEDERAL COURT.

W. E. Balasingham for the appellant.

Mohamed Nizar bin Idris (Senior Federal Counsel) for the respondent.

Azmi L.P.: This is an appeal against the judgment of the High Court at Ipoh giving leave to the plaintiff, Government of Malaysia, to sign final judgment against the defendant company, for the sum of $1,320,440.15 cts, alleged to be additional income tax and increases on that additional income tax imposed under the law against the defendant company for the years of assessment 1960 to 1971.

The writ in this suit was duly served on the defendant and the defendant entered appearance on 31st October 1972. It filed its defence on 7th December 1972. The defence denied that it was liable to pay any additional income tax or increases, assessed or imposed against it. It also contended that section 106(3) of the Income Tax Act 1967 was of no assistance since the defendant company's plea was that no tax whatsoever was due by it to the plaintiff. It went on to maintain that the certificate signed by the Director-General under section 142(1) of the Income Tax Act was merely rebuttal evidence.

The plaintiff, 13 days later applied for leave to sign final judgment against the defendant. The application was heard by the Senior Assistant Registrar on 18th January 1973 and she gave leave to sign final judgment as claimed. The defendant appealed to the judge. The learned judge gave leave to defend on condition that the defendant deposited the amount claimed in court before the 30th April 1973, and when defendant failed to do so the learned judge subsequently restored the order of the Senior Assistant Registrar. Against that judgment the defendant company appealed to this court.

The learned judge in his judgment pointed out that under the provisions of O. XIV r. 1, a defendant should be given unconditional leave to defend if he can satisfy the court that he has a good defence to the action on the merits or discloses such facts as would be deemed sufficient to entitle him to defend the action generally. I might further state here that where there is a *bona fide* triable issue the defendant is entitled to leave to defend without being put upon terms to pay money into court, even though it may appear that the defendant is not likely to succeed (*Jacobs* v. *Booth's Distillery Co.*,[1] *Runnacles* v. *Mesquita*,[2]) and a defence on merits includes any legal defence. The learned judge pointed out that by reason of the provisions of section 106(3) of the Income Tax Act of 1967, the court was precluded from entertaining any plea that the amount sought to be recovered by the Government was excessive, incorrectly assessed or was the subject matter of an appeal before the Special Commissioners. Section 106 reads as follows:—

"106(1) Tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government.

(2) ....

(3) In any proceedings under this section the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under section 103(4) or (5)."

The learned judge then referred to the provisions of section 142(1) of the Act, and that sub-section reads as follows:—

"142(1) In a suit under section 106 the production of a certificate signed by the Director General giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount."

He pointed out that if a suit was brought under section 106 of the Act a certificate signed by the Director-General that the defendant was the person from whom that tax was due and if the certificate gave the amount of the tax to be due, then such a certificate "shall be sufficient evidence of the amount so due and sufficient authority to give judgment for that amount." The amount specified in the certificate was consequently *prima facie* evidence that the amount claimed by the plaintiff was the amount due from the defendant. He went on therefore to say that if the taxpayer wished to dispute that the amount of tax sought to be recovered was excessive, incorrectly assessed, under appeal or incorrectly increased under section 103(4) or (5) he had to do so by way of appeal to the Special Commissioners. He therefore gave leave to the plaintiff to sign final judgment.

In August the same year, however, the learned judge in another civil suit by the Government against a taxpayer (Civil Suit No. 95 of 1971 at Ipoh), took a different stand and gave leave to the taxpayer to defend the case. He would appear to hold the view that section 106(3) of the Income Tax Act 1967 would not apply to cases where the contention is that no tax at all is due. I need only refer to the following passage from the judgment.

"The defendant is challenging the assessment itself. I see no reason why he should not be given the opportunity of a regular hearing in this suit to prove that the assessment made by the Director-General wrong and unjust and is such that no Court of Justice will consider as justifiable. After all it is the plaintiff who instead of having the matter decided by the Special Commissioner has dragged the defendant into court. I think it is my duty to consider the conduct of the plaintiff in departing from the normal course of proceedings contemplated under the Income Tax Act. I was reminded that the combined effect of section 103(1) and section 106(3) was that the role of the court was reduced to that of a mere tool of the plaintiff in short a sort of machinery meant only to implement and give effect to the claim as set out in the statement of claim and that the court was powerless in this regard and that it had but to tread the beaten track laid down by the Act. I am certainly obliged to implement the will of the legislature as expressed in the Act and if it has laid a beaten track which I am obliged to follow I shall follow it without hesitation and without demur. The question, however, is whether what I am told reflects the real intention of the legislature as disclosed in the Income Tax Act 1967. Section 106(3) reads:

'In any proceedings under this section the court shall not entertain any plea that the amount of tax sought to be recovered is excessive incorrectly assessed, under appeal or incorrectly increased under section 103(4) or (5).'

A plea of *excessiveness* of tax claimed can be taken only if it is admitted that some tax is due but the amount claimed *is more than it should be*. A man might, for example, say that instead of $10 the Director-General has assessed him to pay $150 but if he says that no tax is payable by him at all he is not taking the plea that the amount sought to be recovered from him is excessive. The plea is a denial of liability to any assessment whatsoever.

The plea that the tax sought to be recovered is *'incorrectly assessed'* is a plea to the effect that the *method employed* in making the assessment or the calculation arrived at in the assessment is wrong. The challenge then is to the method or the calculation. The defendant is not taking any of these pleas. All he is saying is that he is not liable at all to the assessment. It should not be forgotten that the claim of the plaintiff is based on notices of *additional income* issued by the Director-General and is in respect of *additional income tax, penalties* on the additional income tax and *tax on tin profits*.

Section 106(3), in my view, does not cover cases where there should be no liability to any assessment whatsoever. If there is a case where the Director-General assesses a person to tax without any evidence, is it not open to that person to say and prove that he is not liable to any assessment? Are the doors of justice shut to him merely because the plaintiff is the Government? Is the plea of non-observance of the principles of natural justice not available to him? Does the law forbid him to establish that the Director-General acted arbitrarily and in a non-judicial manner?"

The above passage would appear to support the contention of the appellant in this instant suit that section 106(3) does not apply to a case where the taxpayer contends that no tax whatever is due by him. I regret I am unable to agree with that. In my opinion the learned judge was right in this instant case where he said that if the taxpayer wished to dispute that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under section 103(4) or (5) he has to do so by way of appeal to the Special Commissioners. That opinion would appear consistent with the scheme of the Income Tax legislation. It is only in relation to any disputes on questions of law at the hearing before the Special Commissioners that the matter can be brought to the High Court by way of a case stated.

I would therefore dismiss the appeal with costs.

Gill F.J.: I agree with the learned Lord President that this appeal should be dismissed with costs. There is a string of decided cases (*A.B.C.* v. *The Comptroller of Income Tax, Singapore*;[3] *Comptroller of Income Tax* v. *R.S.T.*;[4] *Comptroller of Income Tax* v. *A. Co. Ltd.*;[5] *Comptroller of Income Tax* v. *A.B. and Comptroller of Income Tax* v. *C.D. Ltd.*;[6] *Comptroller-*

General of Inland Revenue, Malaysia v. *Weng Lok Mining Co. Ltd.*;[7] *Government of Malaysia* v. *D.C.*[8] and *Comptroller-General of Inland Revenue* v. *N.P.*[9]) in which it has been held that the effect of the relevant provisions of the Income Tax Act, 1967 is that on the service of a notice of assessment on the person assessed the tax payable under the assessment becomes due and payable at the place specified in the notice, whether or not the person appeals against the assessment, and can then be recovered by the Government by civil proceedings as a debt due to the Government. On such civil proceedings being brought by the Government, the court has no power to entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased.

In *Comptroller of Income Tax* v. *R.S.T.*[4] Tan Ah Tah J. said at page 217:—

"It was contended by counsel for the defendant that certain triable issues had been raised and that therefore the defendant should have been given leave to defend this action. One of these issues was said to be whether or not the sums on which tax is now claimed represent chargeable income which is taxable or capital assets not subject to taxation. On this point it is sufficient to say that it is eminently a matter for the determination of the Board of Review which was constituted under the Income Tax Ordinance to determine, *inter alia*, questions of that very nature."

In *Comptroller of Income Tax* v. *A. Co. Ltd.*[5] Choor Singh J. summed up the law in such lucid terms that I need no more than echo the following words of his Lordship with which I respectfully agree:

"In my opinion, once the Comptroller of Income Tax has made an assessment and issued a notice of assessment to a taxpayer calling upon him to pay the tax mentioned in the notice, the taxpayer is bound by law to pay such tax within one month even though he may be dissatisfied with the assessment. Whether the assessment is right or wrong, the tax must be paid notwithstanding any objection or appeal. The scheme of the Income Tax Ordinance is that if any person disputes the assessment, he may apply to the comptroller to review and revise the assessment made upon him. If the comptroller refuses to amend the assessment, the aggrieved taxpayer may appeal to the Board of Review appointed under section 78 of the Ordinance and the board may, after hearing the appeal, confirm, reduce, increase or annul the assessment or make such order thereon as to it may seem fit. The taxpayer or the comptroller may then appeal to the High Court from the decision of the board upon any question of law or mixed law and fact. A taxpayer has no right to by-pass the Board of Review and take his complaint direct to court. And when the Comptroller of Income Tax sues a taxpayer to recover tax due under a notice of assessment, the taxpayer cannot be heard to say that the assessment on which tax has been levied was not made in accordance with the provisions of the Ordinance. Such a complaint must in the first instance be laid before the Board of Review. The provisions of Order XIV of the Rules of the Supreme Court must be read together with the provisions of the Income Tax Ordinance. If this is not done every unwilling taxpayer will refuse to pay tax and when sued in court, will challenge the merits of the assessment, thus causing considerable delay in the collection of the tax. The proper course for every aggrieved taxpayer is to pay his tax and present his arguments against the assessment made upon him before the Board of Review."

In place of a Board of Review we now have the Special Commissioners of Income Tax. It is open to a taxpayer to go before them and prove that he is not liable to assessment. The doors of justice are not shut to him merely because the claimant is the Government, but he has to enter the doors of the Special Commissioners first to raise the plea of non-observance of the principle of natural justice or to establish that the Director-General acted arbitrarily and in a non-judicial manner. It is only after he has availed himself of that remedy as laid down by the law that he has a right to come to the courts.

Ong Hock Sim F.J. concurred.

Appeal dismissed.

Solicitors: *Gibb & Co.*

RE KATHIRAVELU DECD.; SUNDARI v. PEMUNGUT DUTI HARTA PESAKA TANAH MELAYU

[O.C.J. (Abdul Hamid J.) October 15, 1973]
[Kuala Lumpur — Originating Petition No. 2 of 1973]

Estate Duty — Policies of assurance effected by deceased for benefit of wife — Whether moneys received or receivable are liable to estate duty — Civil Law Act, 1956 (Act 67), s. 23(1) — Estate Duty Enactment, 1941, ss. 4 and 5.

Insurance — Effected for wife's benefit — Whether liable to estate duty.

The deceased had taken out policies of assurance with two insurance companies for the benefit of his wife. The question which arose was whether estate duty was leviable on the moneys received or receivable under the policies of insurance.

Held: (1) the policies in this case was effected for the benefit of the wife and came within section 23 of the Civil Law Act;

(2) in the case of the first policy it was effected less than five years before his death and moreover the property retained by the wife was not such as to exclude the deceased of any interest as the deceased had the right under the policy to assign, charge, surrender or otherwise deal with the policy without the consent of the beneficiary;

(3) in the case of the second policy, although it was effected more than five years before the death of the deceased, it was quite clear that all rights privileges, and options under the contract were reserved for the deceased alone;

(4) the moneys received or receivable under the assurance policies were therefore not exempted from payment of estate duty.

Cases referred to:

(1) *Partington* v. *A.G.* (1869) L.R. 4 H.L. 100 at p. 122.
(2) *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* [1921] 1 K.B. 64 at p. 71.
(3) *Re Fleetwood's policy* [1926] Ch. 48; [1925] All E.R. Rep. 262.
(4) *Re Equitable Life Assurance Society of the United States and Mitchell* (1911) 27 T.L.R. 213.

ORIGINATING PETITION.

V. C. George for the petitioner.

Siti Norma Yaakob (Senior Federal Counsel) for the respondent.

Abdul Hamid J.: The petitioner Sundari d/o Krishnan, the executrix of the estate of S. Kathiravelu, deceased is asking the court to determine whether estate duty is leviable on moneys received or receivable under certain policies of assurance effected by her husband the deceased.

The facts are not in dispute. S. Kathiravelu effected two assurance policies on his life, one with the Great Eastern Life Assurance Company and the other with the American International Assurance Company.